

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN WILSON,

Plaintiff,

v.

WILLIAM NOAH, et al.,

Defendants.

2:15-cv-00625-JCM-CWH

ORDER

I. DISCUSSION

On February 12, 2016, the Court issued a screening order dismissing the retaliation claim and the Free Exercise and RLUIPA claim against defendant Oxborrow with leave to amend and allowing Plaintiff's Free Exercise and RLUIPA claims against defendants Noah, Mix, and Wahl to proceed. (ECF No. 5 at 7). The Court granted Plaintiff 30 days from the date of that order to file an amended complaint curing the deficiencies of his retaliation claim and his RLUIPA and Free Exercise claim against defendant Oxborrow. (*Id.*). The Court specifically stated that if Plaintiff chose not to file an amended complaint, the action would proceed on the Free Exercise and RLUIPA claims against defendant Noah, Mix, and Wahl only. (*Id.*). Plaintiff has not filed an amended complaint. Pursuant to the screening order, this action shall proceed on the Free Exercise and RLUIPA claims against defendants Noah, Mix, and Wahl.

II. MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff has filed a motion for appointment of counsel. (ECF No. 1-2). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.

§ 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.* In the instant case, the Court does not find exceptional circumstances that warrant the appointment of counsel. The Court denies the motion for appointment of counsel.

III. CONCLUSION

For the foregoing reasons, IT IS ORDERED that, pursuant to the Court’s screening order (ECF No. 5), this action shall proceed on the Free Exercise and RLUIPA claims against defendants Noah, Mix, and Wahl.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Appointment of Counsel (ECF No. 6) is DENIED.

IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has permitted to proceed, this action is **STAYED** for ninety (90) days to allow Plaintiff and Defendant(s) an opportunity to settle their dispute before the \$350.00 filing fee is paid, an answer is filed, or the discovery process begins. During this ninety-day stay period, no other pleadings or papers shall be filed in this case, and the parties shall not engage in any discovery. The Court will refer this case to the Court’s Inmate Early Mediation Program, and the Court will enter a subsequent order. Regardless, on or before ninety (90) days from the date this order is entered, the Office of the Attorney General shall file the report form attached to this order regarding the results of the 90-day stay, even if a stipulation for dismissal is entered prior to the end of the 90-day stay. If the parties proceed with this action, the Court will then issue an order setting a date for Defendants to file an answer or other response. Following the filing of an answer, the Court will issue a scheduling order setting discovery and dispositive motion deadlines.

1 IT IS FURTHER ORDERED that "settlement" may or may not include payment of
2 money damages. It also may or may not include an agreement to resolve Plaintiff's issues
3 differently. A compromise agreement is one in which neither party is completely satisfied with
4 the result, but both have given something up and both have obtained something in return.

5 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required to
6 pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to proceed *in*
7 *forma pauperis*, the fee will be paid in installments from his prison trust account. 28 U.S.C.
8 § 1915(b). If Plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will be due
9 immediately.

10 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from the
11 inmate mediation program, that party shall file a "motion to exclude case from mediation" on
12 or before twenty-one (21) days from the date of this order. The responding party shall have
13 seven (7) days to file a response. No reply shall be filed. Thereafter, the Court will issue an
14 order, set the matter for hearing, or both.

15 IT IS FURTHER ORDERED that the Clerk of the Court shall electronically **SERVE** a
16 copy of this order and a copy of Plaintiff's amended complaint (ECF No. 4) on the Office of the
17 Attorney General of the State of Nevada, attention Kat Howe.

18 IT IS FURTHER ORDERED that the Attorney General's Office shall advise the Court
19 within twenty-one (21) days of the date of the entry of this order whether it will enter a limited
20 notice of appearance on behalf of Defendants for the purpose of settlement. No defenses or
21 objections, including lack of service, shall be waived as a result of the filing of the limited notice
22 of appearance.

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24 DATED: This 30th day of March, 2016

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United States Magistrate Judge

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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 STEVEN WILSON,

12 Plaintiff,

13 v.

14 WILLIAM NOAH, et al.,

15 Defendants.
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REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

19 **NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM. THE**
20 **INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**
21

22 On _____ [*the date of the issuance of the screening order*], the Court
23 issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C.
24 § 1915A, and that certain specified claims in this case would proceed. The Court ordered the
25 Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the
26 date of the entry of the Court's screening order to indicate the status of the case at the end
27 of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

28 ///

REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

_____ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

_____ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (even if the paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

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_____ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this _____ day of _____, _____ by:

Attorney Name: _____
Print Signature

Address: _____ Phone: _____

Email: _____